

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

YURIY KHANIN,	)	Case No.: 1:06 CV 0046
	)	
Petitioner	)	
	)	
v.	)	JUDGE SOLOMON OLIVER, JR.
	)	
STEWART HUDSON, Warden,	)	
	)	
Respondent	)	<u>ORDER</u>

On January 9, 2006, Petitioner Yuriy Khanin (“Petitioner” or “Khanin”) filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his guilty plea for aggravated robbery with felony murder specifications, aggravated robbery, and kidnapping. Petitioner raised two grounds for relief: (1) that the state court’s sentencing panel failed to comply with the requirements of O.R.C. § 2945.05 and (2) that Petitioner was denied the effective assistance of counsel during his plea proceeding. This case was referred to Magistrate Judge Patricia A. Hemann for preparation of a Report and Recommendation. The Magistrate Judge issued her Report and Recommendation on August 25, 2006, recommending that final judgment be entered in favor of the Respondent and that Khanin’s petition be denied. Specifically, the Magistrate Judge found that Khanin had procedurally defaulted the claims brought in his petition and had not established

cause and prejudice to overcome the procedural default. Khanin filed his Objections to the Report and Recommendation on September 25, 2006. (ECF No. 17.)

The court finds, after careful review of the Magistrate Judge's Report and Recommendation and all other relevant files in the record, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation (ECF No. 14) for the reasons stated by the Magistrate Judge as well as those stated herein.

In particular, the court notes that Khanin's contention that the court did not comport with the specifications of O.R.C. § 2954.05 regarding petitioner's waiver of the right to a jury trial is not well taken. Ohio courts have consistently held that

[t]he provisions of Section 2945.05, Revised Code, requiring the filing of a written waiver of a trial by jury are not applicable where a plea of guilty is entered by an accused. The failure in such an instance to file a waiver does not deprive an accused of any of his constitutional rights nor does it deprive the court of its jurisdiction.

*Martin v. Maxwell*, 175 Ohio St. 147, 147 (1963) (citations omitted). Consequently, the sentencing panel did not violate O.R.C. § 2954.05. Accordingly, Khanin's ineffective assistance of counsel claim regarding his waiver of a jury trial has no merit. Thus, as neither of Khanin's grounds for relief are availing, he is unable to show that he was prejudiced by the alleged constitutional violations.

Where a procedural default is found, as here, a petitioner must demonstrate "[1] that there was 'cause' for him to not follow the procedural rule and [2] that he was actually prejudiced by the alleged constitutional error." *Monzo v. Edwards*, 281 F.3d 568, 576 (6th Cir. 2002); *Maupin v. Smith*, 785 F.2d 135, 138 (6th Cir. 1986) (citations omitted). Consequently, to excuse a procedural

default, a petitioner must show *both* cause and prejudice. *See id.* at 140 (affirming a denial of a writ of habeas corpus where the petitioner proved cause but not prejudice). As discussed above, Khanin cannot prove prejudice. Accordingly, the court takes no position on whether the fact that the sentencing panel did not inform Khanin of his right to appeal constitutes sufficient cause.

Khanin's petition for writ of habeas corpus is hereby denied, and final judgment is entered in favor of the Respondent. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.  
UNITED STATES DISTRICT JUDGE

September 28, 2006